

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Keith A. Lowery, et al.
Serial No.: 09/590,760
Filing Date: June 8, 2000
Confirmation No.: 9892
Group Art Unit: 2141
Examiner: Kristie D. Shingles
Title: METHOD AND APPARATUS FOR CONTENT
SYNCHRONIZATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REQUEST FOR PRE-APPEAL BRIEF REVIEW

In response to the Advisory Action mailed September 25, 2006, Applicant respectfully requests a Pre-Appeal Brief review of this Application so that the rejection of the claims and the objections to the Application can be reconsidered prior to submission of an Appeal Brief.

REMARKS

This Request for Pre-Appeal Brief Review is being filed in accordance with the provisions set forth in the Official Gazette Notices of July 12, 2005 and January 10, 2006. Pursuant to the Official Gazette Notices, this Request for Pre-Appeal Brief Review is being filed concurrently with a Notice of Appeal. Applicant respectfully requests reconsideration of the Application in light of the remarks set forth below.

Claims 1-8, 10-16, and 18-29 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Rodkin, et al. in view of Lambert, et al. In the prosecution of the present Application, the Examiner's rejections and assertions contain clear errors of law, including a failure to establish a prima facie case of obviousness. To assist the Panel in the review of this Request for Pre-Appeal Brief Review, Applicant submits the following brief summary for consideration.

In the Advisory Action of September 25, 2006 and the Final Action of June 26, 2006, the Examiner indicates that the Rodkin, et al. patent discloses an ability to receive an indication that content has been changed. The Examiner states that the content server of the Rodkin, et al. patent queries a central server for address information and the central server will provide any updated address information to the content server. However, this address information is associated with hyperlinks identifying data location corresponding to particular character strings in a text file. The Rodkin, et al. patent discloses a technique to keep these hyperlinks current. There is no mechanism in the Rodkin, et al. patent to handle a situation where the content of the text file itself has been changed. Thus, the Examiner's proposed Rodkin, et al. - Lambert, et al. combination does not have a capability to identify changes in data content as required in the claimed invention.

Most notable of the legal errors present in the examination of the Application is a failure of the Final Action of June 26, 2006 to establish a prima facie case of obviousness of the claims in the Application rejected under 35 U.S.C. §103(a). There has been no mention of the three criteria for a prima facie case of obviousness as spelled out in M.P.E.P. §2143. The Examiner has not cited any language from the prior art that would suggest that the Rodkin, et al. patent can be combined in any manner with the Lambert, et al. patent according to the first criterion for a prima facie case of obviousness. The Examiner only provides a baseless subjective and conclusory "it would have been obvious" statement for combining the Rodkin, et al., and Lambert, et al. patents without providing any objective reasoning or citing any evidence of record to support such a position. Moreover, the Examiner has not shown that the Rodkin, et al. and Lambert, et al. patents are analogous to the claimed invention or each other or how the proposed combination would even work for its intended purpose according to the claimed invention.. The Examiner has not provided any reasons how the proposed combination of the Rodkin, et al. patent and the Lambert, et al. patent would have any expectation of success let alone a reasonable expectation of success according to the second criterion for a prima facie case of obviousness.

As for teaching the claimed invention according to the third criterion for a prima facie case of obviousness, Independent Claims 1, 24, and 27 recite in general an ability to receive at a data center manager a data change message from a data source, the data change message being generated in response to a change in the content of the data, and generating an expiration command at the data center manager in response to the data change message. By contrast, the Rodkin, et al. patent is directed to updating hyperlinks to data as the data associated with the hyperlink is re-located to a new

hyperlink or the hyperlink expires. However, the Rodkin, et al. patent has no capability to identify whether the data content of the text files have been changed as opposed to changes to a hyperlink to the data and so is not capable of generating a data change message in response to any data content change. Accordingly, the Rodkin, et al. patent cannot generate a data change message as it does not receive any indication that a content of a text file has been changed. In addition, the Lambert, et al. patent fails to provide or receive any indication that the content of a data item has been changed and thus is also incapable of generating a data change message in response to a change in data content. Moreover, neither the Rodkin, et al. nor Lambert, et al. patents provide an ability to generate an expiration command at the data center manager in response to the data change message since there is no data change message generated in response to a change in the content of data disclosed in either of these patents. The portions of the Rodkin, et al. patent cited by the Examiner are merely directed to assigning an expiration date to a hyperlink destination address. The portions of the Lambert, et al. patent cited by the Examiner are merely directed to assigning an expiration date to content in a server upon being cached. However, neither the Rodkin, et al. nor Lambert, et al. patents have an expiration date being established in response to a data change message or marking the data as expired triggered by a change in the content of the data as required by the claimed invention. Thus, the structure that would result from placing the retrieval of non-cached content of the Lambert, et al. patent into the hyperlink update scheme of the Rodkin, et al. patent would still lack an ability to receive a data change message generated in response to a change in the content of data and generation of an expiration command in response to the data change message as provided by the claimed invention.

CONCLUSION

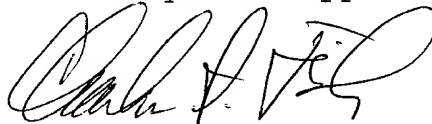
Applicant has now made an earnest attempt to place this Application in condition for allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in black ink, appearing to read "Charles S. Fish", is written over a horizontal line.

Charles S. Fish

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October 26, 2006

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